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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/668,544
Filing Date: September 23, 2003
Appellant(s): GABARA ET AL.

Michael L. Wise
For Appellant

SUPPLEMENTAL EXAMINER'S ANSWER

UNITED STATES PATENT AND TRADEMARK OFFICE

This is in response to the "ORDER" filed on November 29, 2007. The original Examiner's Answers, filed on January 03, 2007, was in response to the appeal brief, filed on August 17, 2006, appealing from the Office action mailed on May 26, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after Final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Comp	U.S. Pub. No. 2004/0203698 A1	April 22, 2002
Kraft et al	U.S. Pub. No. 2003/0017858 A1	August 14, 2002
Cervello et al	U.S. Pub. No. 2002/0060995	July 9, 2001
Kinnunen et al	U.S Patent No. 6,813,501 B2	Feb. 27, 2001
Ramaswamy et al	U.S. Pub. No. 2004/0052232 A1	Sep. 13, 2002
Pogrebinsky et al	U.S. Pub. No. 2002/0044528 A1	Sep. 14, 2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections –35 U.S.C. 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5, 8 and 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Karaoguz (U.S. Pub. No. 2004/0203889 A1).

Referring to claim 1, Karaoguz discloses a method for use in a wireless network comprising a plurality of user devices adapted for communication with at least one access point device (Figure 2-5, and paragraphs 17, 19, and 22, "wireless . . . network . . . containing an Access Point . . . devices 220a, 220b"), the method comprising the steps of

initiating a test of a communication link between at least one of the user devices and the access point device the test comprising a determination of data throughput performance (Figs. 2-5, and paragraphs 17, 19, 22, 38, and 40-44, "evaluate and assess the location information", "determine a primary optimal location", "recommend and provide the optimal information to the wireless device", "corresponding optimal locations along with the corresponding data rates", note that the optimal location for communication is determined and recommended, hence it is

inherent that a test is performed so that the optimal positions are determined. Further note that specific locations within the cell configuration provide specific data throughput performance. The data throughput performance of each location within the cell is inherently determined in order to provide the data rate capacity for each particular location since each location within the cell has a known data rate capacity, where optimum location is consequently determined according to such data rate capacity), and

generating, based at least in part on a result of the test, an instruction displayable to a user associated with a given one of the user devices, the instruction being indicative of a location at which the given user device is expected to obtain a particular level of data throughput performance (paragraphs 7-9, and 40-44, Abstract, Figures 1-5, "device makes its evaluation and assessment of what is or are optimal location(s)", "corresponding optimal locations along with the corresponding data rates", "additional information . . . data capabilities information such as data rate", "optimal location information", "a recommendation signal", "configuration device can recommend and provide the optimal information to the wireless device . . . as shown on FIG. 5", "device makes its evaluation and assessment of what is or are optimal location(s)", "corresponding optimal locations along with the corresponding data rates", note that test (evaluation and assessment) is initiated so that optimal locations are determined. Further note that data throughput performance (data rate) information is provided with corresponding optimal locations, hence it is inherent that the test comprises a determination of data throughput performance. Further note that test (evaluation and assessment) is performed to determine what is optimal location and a recommendation signal is transmitted to the wireless device as a result of the test and inherently displayed as on figure 5).

Referring to claim 2, Karaoguz disclose the method of claim 1, wherein the test comprises a test of a communication link between the given user device and the access point device (paragraphs 6-8, and 40-44).

Referring to claim 3, Karaoguz disclose the method of claim 1, wherein the test comprises a test of a communication link between one of the user devices, other than the given user device, and the access point device (figures 2-5, and paragraphs 6-8, and 40-44).

Referring to claim 4, Karaoguz disclose the method of claim 1, wherein the location comprises a location at which the given user device is expected to obtain a maximum achievable level of data throughput performance (Abstract, Figures 2-5, and paragraphs 0006, 0041-0042, "optimal location information", "optimal locations").

Referring to claim 5, the Karaoguz disclose the method of claim 1, wherein the given user device is at a current location, and the instruction is indicative of another location associated with an improved level of data throughput performance relative to that of the current location (figures 2-5 and 0040-0044, "optimal location information", "optimal locations", note that one or more optimal location information is provided and the user can at any time choose the optimal location for better communication).

Referring to claim 8, Karaoguz disclose the method of claim 1, wherein the test comprises a test of at least one of an uplink communication channel between the user device and the access point device and a downlink communication channel between the user device and the access point device (paragraphs 0040-0044, note that data rate capacity is tested to determine best access point, hence at least one of an uplink communication channel between the user device and the access point device and a downlink communication channel between the user device and the access point device is tested).

Referring to claim 17, Karaoguz discloses an apparatus for use in a wireless network including a plurality of user devices adaptable for communication with at least one access point device (Figure 2-5, and paragraphs 17, 19, and 22, "wireless . . . network . . . containing an Access Point . . . devices 220a, 220b"), the apparatus comprising

a processing device having a processor coupled to a memory, the processing device comprising at least one of a user device and an access point device of the wireless network wherein the processing device is configurable to initiate a test of a communication link associated with at least one of the user devices, the test comprising a determination of data throughput performance (Figs. 2-5, and paragraphs 17, 19, 22, 38, and 40-44, "evaluate and

assess the location information", "determine a primary optimal location", "recommend and provide the optimal information to the wireless device", "corresponding optimal locations along with the corresponding data rates", note that the optimal location for communication is determined and recommended, hence it is inherent that a test is performed so that the optimal positions are determined and inherently a processor exists so that such determination is provided where the processor is inherently coupled to the memory. Further note that specific locations within the cell configuration provide specific data throughput performance. The data throughput performance of each location within the cell is inherently determined in order to provide the data rate capacity for each particular location since each location within the cell has a known data rate capacity, where optimum location is consequently determined according to such data rate capacity determination).

to generate, based at least in part on a result of the test, an instruction displayable to a user associated with a given one of the user devices, the instruction being indicative of a location at which the given user device is expected to obtain a particular level of data throughput performance (paragraphs 6-9, and 40-44, Abstract, Figures 1-5, "device makes its evaluation and assessment of what is or are optimal location(s)", "corresponding optimal locations along with the corresponding data rates", "additional information . . . data capabilities information such as data rate", "optimal location information", "optimal locations", "a recommendation signal", "Access Point", "device makes its evaluation and assessment of what is or are optimal location(s)", "corresponding optimal locations along with the corresponding data rates", note that test (evaluation and assessment) is initiated so that optimal locations are determined. Further note that data throughput performance (data rate) information is provided with corresponding optimal locations, hence it is inherent that the test comprises a determination of data throughput performance. Further note that test (evaluation and assessment) is performed to determine what is optimal location and a recommendation signal is transmitted to the wireless device as a result of the test).

Referring to claim 18, Karaoguz discloses a communication system (Abstract, Figures 1-5, and paragraphs 7-9) comprising a wireless network including a plurality of user devices adaptable for communication with at least one access point device (FIGS. 1-5, Figure 2-5, and

paragraphs 17, 19, and 22, 38 and 40-44 "wireless . . . network . . . containing an Access Point . . . devices 220a, 220b"), wherein a test of a communication link between at least one of the user devices and the access point device is initiated the test comprising a determination of data throughput performance (Figs. 2-5, and paragraphs 17, 19, 22, 38, and 40-44, "evaluate and assess the location information", "determine a primary optimal location", "recommend and provide the optimal information to the wireless device", "corresponding optimal locations along with the corresponding data rates", note that the optimal location for communication is determined and recommended, hence it is inherent that a test is performed so that the optimal positions are determined. Further note that specific locations within the cell configuration provide specific data throughput performance. The data throughput performance of each location within the cell is inherently determined in order to provide the data rate capacity for each particular location since each location within the cell has a known data rate capacity, where optimum location is consequently determined according to such data rate capacity), and

based at least in part on a result of the test, an instruction displayable to a user associated with a given one of the user devices is generated, the instruction being indicative of a location at which the given user device is expected to obtain a particular level of data throughput performance (paragraphs 7-9, and 40-44, Abstract, Figures 1-5, "device makes its evaluation and assessment of what is or are optimal location(s)", "corresponding optimal locations along with the corresponding data rates", "additional information . . . data capabilities information such as data rate", "optimal location information", "a recommendation signal", "configuration device can recommend and provide the optimal information to the wireless device . . . as shown on FIG. 5", "device makes its evaluation and assessment of what is or are optimal location(s)", "corresponding optimal locations along with the corresponding data rates", note that test (evaluation and assessment) is initiated so that optimal locations are determined. Further note that data throughput performance (data rate) information is provided with corresponding optimal locations, hence it is inherent that the test comprises a determination of data throughput performance. Further note that test (evaluation and assessment) is performed to determine what is optimal location and a recommendation signal is transmitted to the wireless device as a result of the test and inherently displayed as on figure 5).

Referring to claim 19, Karaoguz discloses an article of manufacture comprising a machine-readable storage medium storing one or more software programs for use in a wireless network (figures 2-5, and paragraphs 7-8, 17-18, and 40-44, "a method of optimally configuring a wireless cell network . . . implemented in hardware, or software")

comprising a plurality of user devices adapted for communication with at least one access point device wherein the one or more programs when executed implement the steps of initiating a test of a communication link between at least one of the user devices and the access point device, the test comprising a determination of data throughput performance (Figs. 2-5, and paragraphs 17, 19, 22, 38, and 40-44, "evaluate and assess the location information", "determine a primary optimal location", "recommend and provide the optimal information to the wireless device", "corresponding optimal locations along with the corresponding data rates", note that the optimal location for communication is determined and recommended, hence it is inherent that a test is performed so that the optimal positions are determined. Further note that specific locations within the cell configuration provide specific data throughput performance. The data throughput performance of each location within the cell is inherently determined in order to provide the data rate capacity for each particular location since each location within the cell has a known data rate capacity, where optimum location is consequently determined according to such data rate capacity); and

generating, based at least in part on a result of the test, an instruction displayable to a user associated with a given one of the user devices, the instruction being indicative of a location at which the given user device is expected to obtain a particular level of data throughput performance (paragraphs 7-9, and 40-44, Abstract, Figures 1-5, "device makes its evaluation and assessment of what is or are optimal location(s)", "corresponding optimal locations along with the corresponding data rates", "additional information . . . data capabilities information such as data rate", "optimal location information", "a recommendation signal", "configuration device can recommend and provide the optimal information to the wireless device . . . as shown on FIG. 5", "device makes its evaluation and assessment of what is or are optimal location(s)", "corresponding optimal locations along with the corresponding data rates", note that test (evaluation and assessment) is initiated so that optimal locations are determined. Further note that data throughput performance (data rate) information is provided with corresponding optimal

locations, hence it is inherent that the test comprises a determination of data throughput performance. Further note that test (evaluation and assessment) is performed to determine what is optimal location and a recommendation signal is transmitted to the wireless device as a result of the test and inherently displayed as on figure 5).

Referring to claim 20, Karaoguz discloses a method for use in a wireless network (Figure 2-5, and paragraphs 17, 19, and 22, 38 and 40-44 "wireless . . . network . . . containing an Access Point . . . devices 220a, 220b") comprising a plurality of user devices adapted for communication with at least one access point device (Figure 2-5, and paragraphs 17, 19, and 22, 38 and 40-44 "wireless . . . network . . . containing an Access Point . . . devices 220a, 220b"), the method comprising the steps of initiating a test of a communication link between a user device at a current location and an access point device, the test comprising a determination of data throughput performance (Figs. 2-5, and paragraphs 17, 19, 22, 38, and 40-44, "evaluate and assess the location information", "determine a primary optimal location", "recommend and provide the optimal information to the wireless device", "corresponding optimal locations along with the corresponding data rates", note that the optimal location for communication is determined and recommended, hence it is inherent that a test is performed so that the optimal positions are determined. Further note that specific locations within the cell configuration provide specific data throughput performance. The data throughput performance of each location within the cell is inherently determined in order to provide the data rate capacity for each particular location since each location within the cell has a known data rate capacity, where optimum location is consequently determined according to such data rate capacity); and

generating, based at least in part on a result of the test, an instruction displayable to a user associated with the user device, the instruction being indicative of another location associated with an improved level of data throughput performance relative to that of the current location (paragraphs 7-9, and 40-44, Abstract, Figures 1-5, "device makes its evaluation and assessment of what is or are optimal location(s)", "corresponding optimal locations along with the corresponding data rates", "additional information . . . data capabilities information such as data rate", "optimal location information", "a recommendation signal", "configuration device can recommend and provide the optimal information to the wireless device . . . as shown on FIG. 5",

"device makes its evaluation and assessment of what is or are optimal location(s)", "corresponding optimal locations along with the corresponding data rates", note that test (evaluation and assessment) is initiated so that optimal locations are determined. Further note that data throughput performance (data rate) information is provided with corresponding optimal locations, hence it is inherent that the test comprises a determination of data throughput performance. Further note that test (evaluation and assessment) is performed to determine what is optimal location and a recommendation signal is transmitted to the wireless device as a result of the test and inherently displayed as on figure 5).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub. No. 2004/0203889 A1, Karaoguz, in view of U.S. Pub. No. 2004/0203698 A1, Comp.

Referring to claim 6, Karaoguz disclose the method of claim 1.

Karaoguz does not disclose the generated instruction is displayable on a display screen of **the user device**.

Comp discloses a pre-notification of potential connection loss in a wireless network where instruction is displayable on a display screen of the user device for a potential connection loss (Paragraphs 0022, "display", "notification", "potential loss").

It would have been obvious to one of the ordinary skill in the art at the time of the invention to modify the method of Karaoguz by providing the generated instruction to be displayable on a display screen of the user device, as suggested by Comp, motivation being for the purpose of providing the best available signal strength for the user, and consequently making wireless users happy.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub. No. 2004/0203889 A1, Karaoguz, in view of U.S. Pub. No. 2003/0017858 A1, Kraft et al.

Referring to claim 7, Karaoguz disclose the method of claim 1.

Karaoguz does not disclose the generated instruction is displayable on a display screen that is not part of the user device.

Kraft discloses a data entry method where data is displayed in different display units (Paragraphs 0010 and 0027, "third display').

It would have been obvious to one of the ordinary skill in the art at the time of the invention to modify the method of Karaoguz by providing the generated instruction to be displayable on a display screen that is not part of the user device, as suggested by Kraft, motivation being for the purpose of providing the strongest available signal strength for the user, and consequently making wireless users happy.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub. No. 2004/0203889 A1, Karaoguz, in view of U.S. Pub. No. 2004/0052232 A1, Ramaswamy et al.

Referring to claim 13, Karaoguz disclose the method of claim 1.

Karaoguz does not disclose the generating step utilizes information derived from a global positioning system (GPS) in determining the location at which the given user device is expected to obtain a particular level of data throughput performance.

Ramaswamy discloses utilizing global positioning system (GPS) in determining the location at which the given user device is expected to obtain a particular level of data throughput performance (Paragraphs 0017, 0019-0020, and 0022).

It would have been obvious to one of the ordinary skill in the art at the time of the invention to modify the method of Karaoguz by providing the generating step to utilize information derived from a global positioning system (GPS) in determining the location at which the given user device is expected to obtain a particular level of data throughput performance, as suggested by Ramaswamy, motivation being for the purpose of providing a reliable tracking system.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub. No. 2004/0203889 A1, Karaoguz, in view of U.S. Patent No. 6,813,501 B2, Kinnunen et al.

Referring to claim 14, Karaoguz disclose the method of claim 1.

Karaoguz does not disclose the generated instruction comprises an indication of a particular area within a given facility.

Kinnunen discloses a location dependent services method, where a particular area within a given facility is chosen for mobile terminals (col. 4, lines 42-67).

It would have been obvious to one of the ordinary skill in the art at the time of the invention to modify the method of Karaoguz by providing the generated instruction to comprise an indication of a particular area within a given facility, as suggested by Kinnunen, motivation being for the purpose of providing a strong signals in particular areas where communication is likely to experience weak signals.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub. No. 2004/0203889 A1, Karaoguz, in view of U.S. Pub. No. US 2002/0044528 A1, Pogrebinsky et al.

Referring to claim 10, Karaoguz disclose the method of claim 1 wherein the test comprises a test sequence involving transmission between the at least one user device and the access point device.

Karaoguz does not specifically disclose the test comprises a test sequence **involving the transmission of a plurality of known packets at different bit rates** between the at least one user device and the access point device.

Pogrebinsky discloses a method and apparatus for measuring network bandwidth where the method involves a test sequence involving the transmission of a plurality of known packets at different bet rates (abstract, and paragraphs 3, 5, 6, 13-14, 26, 28-29, and 41, "estimating present network bandwidth, transmitting test packets for measuring the available bandwidth, and adjusting the bandwidth . . . by changing packet transmission bitrate").

It would have been obvious to one of the ordinary skill in the art at the time of invention to incorporate the teachings of Pogrebinsky into that of Karaoguz and consequently providing test to comprise a test sequence **involving the transmission of a plurality of known packets at different bit rates** between the at least one user device and the access point device, motivation being for the purpose of saving time in performing measurements and avoiding overloading the network.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub. No. 2004/0203889 A1, Karaoguz, in view of U.S. Pub. No. 2002/0060995 A1, Cervello et al.

Referring to claim 16, Karaoguz disclose the method of claim 1.

Karaogus does not specifically the user device is compatible with at least one of the 802.11a standard, the 802.11b standard and the 802.11g standard.

Cervello discloses user device is compatible with at least one of the 802.11a standard, the 802.11b standard and the 802.11g standard (Abstract, and paragraphs 0003, 0006-0008, 0011, 0022-0023, 0025, 0037 and 0045).

It would have been obvious to one of the ordinary skill in the art at the time of invention to incorporate the teachings of Cervello into that of Karaogus and providing user device to be compatible with at least one of the 802.11a standard, the 802.11b standard and the 802.11g standard, motivation being for the purpose of providing the benefits of 802.11a standard, the 802.11b standard and the 802.11g standard, and expanding the network to such standards.

Claim 9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub. No. 2004/0203889 A1, Karaoguz, in view of well known prior art (MPEP 2144.03).

Referring to claim 9, Karaoguz disclose the method of claim 1.

Karaoguz does not disclose the test is initiated in conjunction with access to a server connected to the access point via a network.

The examiner takes official notice of the fact that it is well known in the art for access points to be connected to servers via a network.

It would have been obvious to one of the ordinary skill in the art at the time of the invention to provide the test to be initiated in conjunction with access to a server connected to the access point via a network, motivation being for the purpose of providing an efficient and robust network.

Referring to claim 15, the Karaoguz disclose the method of claim 1 (as rejected above).

Karaoguz does not specifically disclose the generated instruction comprises an indication of a particular seating location in a group of seating locations within a given facility.

The examiner takes official notice of the fact that it is well known in the art for an access location to be a particular seating location in a group of seating location as it is well known that a person with a wireless computer laptop with operating the laptop while seated.

It would have been obvious to one of the ordinary skill in the art at the time of the invention to provide the generated instruction to comprise an indication of a particular seating location in a group of seating locations within a given facility, motivation being for the purpose of providing an convenience for the user of a wireless device by being seated.

Claim 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pub. No. 2004/0203889 A1, Karaoguz, in view of U.S. Pub. No. US 2002/0044528 A1, Pogrebinsky et al, and further in view of well known prior art (MPEP 2144.03).

Referring to claim 11, the combination of Karaoguz/Pogrebinsky disclose the method, of claim 10.

The combination of Karaoguz/Pogrebinsky does not specifically disclose the test sequence is initiated by the at least one user device, and the packets are transmitted to the access point device and returned from the access point device to the at least one user device.

The examiner takes official notice of the fact that it is well known in the art for user devices or mobile station to initiate testing and sending the initial data packets to an access node or base station.

It would have been obvious to one of the ordinary skill in the art at the time of the invention to provide the testing to be initiated by the user device and providing packets to be transmitted to the access point device and returned from the access point device to the at least one user device, because it would allow the user to be proactive and test throughput without waiting for a report from the network.

Referring to claim 12, the combinations of Karaoguz/Pogrebinsky disclose method of claim 10.

The combinations of Karaoguz/Pogrebinsky does not specifically disclose the test sequence is initiated by the access point device, and the packets are transmitted from the access point device to the at least one user device.

The examiner takes official notice of the fact that it is well known in the art for access points and/or base stations to initiate testing and sending the initial data packets to a user device or mobile terminal.

It would have been obvious to one of the ordinary skill in the art at the time of the invention to provide the testing to be initiated by the access point and providing the test sequence to be initiated by the access point device, and the packets to be transmitted from the access point device to the at least one user device, because it would provide user convenience, and users do not have to take any steps to initiate determining throughput.

(10) Response to Arguments

a. With regards to independent claims 1 and 17-20, the appellants allege that Karaoguz, US Publication No. 2004/0203889 A1 (herein after Karaoguz) does not have the limitation "initiating a test of a communication link between at least one of the user devices and the access point, the test comprising a determination of data throughput performance".

It is noted that specification does not describe what constitutes a "test of communication link", what the "test" involves and what steps are involved in the "test". The specification only states that a test is initiated between at least one of the pluralities of user devices and an access point.

Therefore, in determining patentability, the examiner must determine what the broadest reasonable interpretation of the claimed terminology "test of the communication link" could be, with the only clue from appellant being that it must comprise "a determination of data throughput performance".

To this end, the examiner surmised that clearly if data was repeatedly sent back and forth over the communication link of increasing data rates, received errors were monitored and reported until a given data rate was achieved that would constitute a test of the communication link. However, the examiner wondered how many such steps were

necessary to invalidate or infringe the claim and further wondered how many repetitions of data transfer were sufficient to properly "test" the link. Not able to put a number on the number of steps that were necessary to "test" the link, the examiner considered how broad the term "test" could be reasonably construed to one of ordinary skill in the art, and thought that basically a "test" is merely a "question" designed to determine knowledge. In the instant application, we know that the knowledge appellants trying to achieve on the claimed test is "a determination of data throughput performance". Therefore, it logically follows that all that is necessary to meet the claimed limitation is a question regarding a communication link between an access point and a wireless device that includes or results in the "determination of data throughput performance".

In this case Karaoguz discloses that a communication request message (question) from a wireless device results in the "evaluation" or "assessment" (test) on the configuration device (access point) and includes the available "data rates" (throughput performance) based on communication with the wireless devices. See paragraphs 40-42.

Moreover, Karaoguz describes that an access point (configuration device) that determines (by evaluation and assessment) optimal locations (See paragraphs 40-42), where a wireless device is positioned in one of the optimal locations, is able to perform special tasks that require a higher data rate (throughput). The access point of Karaoguz transmits such performance information (including throughput or data rate) about the optimal locations to the wireless device so that the wireless device could move to an optimal location for better data transfer rate in order to perform the desired tasks that require a higher data rate. When communication takes place between a wireless device in an optimal location and the access point the data throughput between them would inherently be higher than when communication takes place between a wireless device in a non-optimal location and the access point. Thus the communication link between a wireless device in an optimal location and the access point would have a higher throughput than the link between a wireless device in a non-optimal location and the access point. Consequently, this realization of optimal location also provides a realization of communication links between the access point and a wireless device at different locations e.g., the communication link between the access point and a wireless

device positioned in an optimal location would inherently have a higher throughput than the communication link between the access point and a wireless device in a non-optimal location because data is processed at a higher data rate at the optimal location and thus their communication link would have a higher efficiency. On the other hand, in a non-optimal location data would be processed a lower data rate and thus the communication channel would be under-utilized and consequently providing a lower efficiency. Therefore, there is at least one process in Karaoguz that reads on "initializing a test of a communication link" as presented in appellant's claim 1, e.g., determination (evaluation and assessment) of optimal locations that ultimately determines channel capacities between the access point and a wireless device at different locations.

b. Referring to claim 6, In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Comp (US Pub. No. 2004/0203698 A) has the claim element missing in Karaoguz, thus combined to produce the claimed invention.

c. Applicant's arguments with respect to claim 7 have been fully considered but they are not persuasive. Referring to claim 7, In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

d. With regards to claim 8, a communication process between the access point and a wireless device via a wireless communication channel inherently involves an uplink communication channel and downlink communication channel. Thus, the communication initiation test that was established above with the rejection of claim 1 is inherently a test of the uplink and downlink communication links.

Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interference section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Fred Casca

Conferees:

Lester Kincaid

LESTER G. KINCAID
SUPERVISORY PRIMARY EXAMINER

Joseph Feild

JOSEPH FEILD
SUPERVISORY PATENT EXAMINER